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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,014	06/22/2006	Nigel Paul Rose	1926-00117	4763

26753 7590 04/14/2009  
ANDRUS, SCEALES, STARKE & SAWALL, LLP  
100 EAST WISCONSIN AVENUE, SUITE 1100  
MILWAUKEE, WI 53202

EXAMINER
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CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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04/14/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/584,014		ROSE, NIGEL PAUL	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jeanette E. Chapman		3633	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-46 is/are pending in the application.
- 4a) Of the above claim(s) 29,31,40 and 42-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27,28,30,32-39,41,45 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/22/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species

Specie 1, figure1

Specie 2, figure 2,

specie 3 figure 3.

Specie 4, figure 4

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

During a telephone conversation with Mr. Thomas Wozny on 4/3/09 a provisional election was made with traverse to prosecute the invention of group II, claims 27-28, 30, 32, 34-36, 38-39, 41, 45-46. Affirmation of this election must be made by applicant in replying to this Office action. Claims 29, 31, 40, 42-44 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-28, 30, 32, 34-36, 38-39, 41, 45-46 are rejected under 35 U.S.C. 102(b) as being anticipated Silverman (4027442)

Art Unit: 3633

Claim 27.

Silverman discloses a method of thermally insulating a pool, said method comprising steps of preparing a pool structure, see abstract, and attaching a layer of thermal insulation material 20 to an interior surface of said pool structure.

claim 28.

Silverman discloses the method of claim 27, wherein said step of preparing the pool structure comprises a step of building a new pool structure. See column 3, lines 25-30.

Claim 30.

Silverman discloses the method of claim 28, wherein said step of building a new pool structure includes attaching a further layer of thermal insulation material 25 to an exterior surface 21/12 of said pool structure.

claim 32.

Silverman discloses the method of claim 27, wherein the step of attaching a layer of thermal insulation material 20 to an interior surface of said pool structure 15 comprises applying an adhesive to a least one of said layer and said surface. See column 4, lines 19-28.

claim 34.

Silverman discloses the method of claim 27, wherein said layer of thermal insulation material comprises an impermeable material, polyurethane plastic.

claim35.

Silverman discloses the method of claim 27, wherein said layer of thermal insulation material comprises at least one thermal insulation boards 15  
claim 36.

Silverman discloses the method of claim 35, wherein said at least one thermal insulation board is coated on all surfaces thereof with a sealant layer 16.  
claim 38.

Silverman discloses the method of claim 27, wherein the step of attaching a layer of thermal insulation material to an internal surface of said pool structure comprises attaching said layer to at least one of a wall and a floor of said pool structure. See figure 1  
claim 39.

Silverman discloses the method of claim 27, further comprising a step of applying a finish 26/27 to said layer of thermal insulation material 25.  
claim 41.

Silverman discloses the method of claim 39, wherein the step of applying a finish comprises laying a waterproof liner over the said layer 27.  
claim 45.

Silverman discloses a pool constructed according to the method of claim 27, said pool comprising a pool structure and a layer of thermal insulation material 20 attached to an interior surface of a floor of said pool structure 21.  
claim 46.

Silverman discloses the pool of claim 45, further comprising a layer of thermal insulation material 20 attached to an interior surface of at least one wall of said pool structure 21.

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### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silverman..  
claim 33.

Silverman does not employ the step of attaching a layer of thermal insulation material to an interior surface of said pool structure comprises a mechanical fastener. Such a limitation lacks criticality or relevancy. Further it is clear for a stronger attachment one would employ a nail or screw.  
claim 37.

The type of material selected for the thermal insulation board is selected from a phenolic insulation board and a cellular glass insulation board has been considered a matter of choice; one of ordinary skill in the art of modern day swimming pools would have appreciated using the materials providing the needed function in an insulated swimming pool..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner<sup>1</sup> can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEANETTE CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3633

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